



US Army Corps
of Engineers®

DEPARTMENT OF THE ARMY REGIONAL PERMIT No. 4
FOR
MOSQUITO ABATEMENT
ACTIVITIES

Sponsor: **California Department of Health Services**

File No.: **400304S**

Issuing Office: **San Francisco District**

NOTE. The term “you” and its derivatives, as used in this permit, means the permittee. The term “this office” refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

Authorized work:

- 1. Maintenance (but not construction) of currently serviceable water circulation ditches. Maintenance does not include any modification that changes the character, scope, or size of the original ditch.**
- 2. Sidecasting of fill incidental to the removal of debris, weeds, and emergent vegetation in natural channels where normal water circulation is impeded such that mosquito breeding can occur.**
- 3. Filling of existing, nonfunctional water circulation ditches to the extent necessary to achieve the required water circulation dynamics and restore ditched wetlands.**

Permit Conditions:

General Conditions:

- 1. This authorization ends on February 1, 2013.**
- 2. Endangered Species.** No activity is authorized under this regional permit which is likely to adversely affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the district engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.
- 3. Equipment.** Staging areas shall be on upland sites if available. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance (e.g., use of low ground pressure vehicles).
- 4. Suitable material.** No discharge of dredged or fill material into the waters of the United States may consist of unsuitable material (e.g., trash) and material discharged must be free of toxic pollutants in toxic amounts. (see section 307 of the Clean Water Act)
- 5. Discharges of dredged or fill material into the waters of the United States must be minimized or avoided to the maximum extent possible at the project site.**
- 6. Work authorized under this regional permit shall be conducted, whenever possible, during the period of 1 August through 31 January.**

7. No activity authorized under this permit may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area. In waterbodies which support anadromous fish, work shall be conducted during the period 1 July through 30 September.

8. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

9. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

10. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. No work shall be performed in tidal marshes of San Francisco Bay, San Pablo Bay, and western Suisun Bay (west of Grizzly Bay) between 1 February and 1 September, the breeding season of the California clapper rail. Specific areas of tidal marsh which have been determined in writing by the US FWS to provide no suitable habitat for the California clapper rail may be conditionally excluded from this prohibition.

2. No spoils sidecast adjacent to circulation ditches shall exceed 8 inches in relief above the marsh plain after dewatering. Sidecast spoil lines exceeding 4 inches in height above the marsh plain shall extend no more than 6 feet from the nearest ditch margin. Any spoils in excess of these dimensions shall be either hydraulically redispersed on site, or removed to designated upland sites, out of Corps jurisdiction. Sidecast spoil lines shall be breached at appropriate intervals to prevent local impediments to water circulation.

3. A work plan for each year's proposed maintenance activities shall be submitted to the Corps, US FWS, and CDFG no later than 1 July of each year. The Corps will provide notification within 30 days if any of the proposed work is determined to have more than minimal adverse impacts, after consideration of any proposed mitigation, and is therefore not authorized by this permit. The work plan shall include a delineation of all proposed ditching overlain on topographic maps at a minimum 1" = 1000' scale, with accompanying vicinity maps. The plan shall also indicate the dominant vegetation of the site, based on subjective estimates; the length and width of the ditches to be maintained, cleared or filled, and; the estimated date the work will be carried out. A report of the actual work done in the previous year shall be included with the work plan.

4. If the review of the proposed work plan by the Corps, US FWS or CDFG determines the proposed maintenance is likely to destroy or damage substantial amounts of shrubby or sub-shrubby vegetation (e.g., coyote brush, gumplant) on old sidecast spoils, the permittee will be notified to provide a quantitative estimate of the extent and quality of the vegetation, and a revegetation plan for the impacted species prepared by a biologist/botanist with expertise in marsh vegetation. The Corps approved revegetation plan shall be implemented prior to April 1 of the year following the impacts.

5. In marshes which contain populations of invasive nonnative vegetation such as *Lepidium latifolium* or introduced species of *spartina*, sidecast spoils shall be surveyed for the frequency of establishment of these species during the first growing season following the deposition of the spoils. The results of the surveys shall be reported to the Corps, US FWS and CDFG. If it is determined the sidecasting of spoils have resulted in a substantial increase in the distribution or abundance of the nonnative vegetation which is detrimental to the marsh, the permittee shall implement appropriate abatement measures after consultation with the Corps, US FWS and CDFG.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(District Engineer)

(Date)